IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.24478 of 2007
AND
MP.NOs.1 and 2 of 2007

K.K.Rasappan ...Petitioner

Vs.

1. State Industries Promotion Corporation
of Tamil Nadu Limited,
19-A, Rukmani Lakshmipathy Road,
Post Box No.7223, Egmore, Chennai 600 008.

2. The Project Officer,
SIPCOT Complex,
Perundurai,
Erode District.

3. K.Natarajan ..Respondents

For Petitioner : Mr.Silambannan, Senior Counsel
for M/s S.Silambannan Associates
For Respondents: Mr.M.Devraj (R1 & R2)
Mr.Habibullah Basha, Senior Counsel
for Mr.S.D.S.Philip (R3)

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration to declare plot CML-15 in Perundurai, SIPCOT Industrial Park to extent of 1 acre in favour of the 3rd respondent on 29.05.2007, the consequential lease agreement entered and registered between SIPCOT and the 3rd respondent without resorting to public auction for such allotment is arbitrary and illegal and violative of public policy and policy of State Industrial Promotion Corporation of Tamil Nadu Limited, and consequently direct the respondents 1 & 2 to resort to public auction for allotment CML-15 and any other plot for commercial activity for weigh bridge in Perundurai SIPCOT complex in a transparent manner.

O R D E R

Invoking the writ jurisdiction of this Court, the petitioner has sought for a declaration to declare plot CML-15 in Perundurai, SIPCOT Industrial Park to an extent of 1 acre in favour of the 3rd respondent on 29.05.2007, the consequential lease agreement entered and registered between SIPCOT and the 3rd respondent without resorting to public auction for such allotment is arbitrary and illegal and violative of public policy

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and policy of State Industrial Promotion Corporation of Tamil Nadu Limited, and consequently direct the respondents 1 & 2 to resort to public auction for allotment CML-15 and any other plot for commercial activity for weigh bridge in Perundurai SIPCOT complex in a transparent manner

2. Affidavit filed in support of this petition and counter affidavits filed by the respondents are all perused.

3. The Court heard the learned counsel on either side.

4. The case of the petitioner in short is that the first respondent had acquired about 2500 acres at Perundurai for the purpose of promotion of Industries, Promotion of Commercial Establishments also and allotment of plots of various measures purely on lease basis for a period of 99 years. While such allotments are made by the first respondent, various conditions and time limits are imposed. SIPCOT Industrial Park Provision is made by SIPCOT to have a weigh bridge for industrial needs throughout the State; that one plot was reserved for a weigh bridge in so far as Perundurai was concerned. One plot measuring one acre was already allotted to third party in the year 2004. The said weigh bridge is functioning till this time.

5. While the matter stood thus, the petitioner and others approached the SIPCOT requesting one more plot telling about the necessity for the same. Project Officer at Perundurai informed that he could not take any independent decision and then they approached the General Manager at SIPCOT and when they approached and appraised of the necessity for the second weigh bridge at Perundurai, the petitioner and others were informed that the SIPCOT has been following certain norms and they do not encourage more than one weigh bridge in SIPCOT Industrial Park. The first respondent assured that if the first respondent decides to grant one more weigh bridge, the land/plot would be allotted as per the present policy and it would be only by public auction for such commercial activity. Thus the petitioner was not able to get the allotment for another weigh bridge at SIPCOT complex. The petitioner was anxiously waiting for the second weigh bridge at Perundurai. To his surprise, he came to know that the first respondent has issued the allotment order on 29.05.2007 in favour of the third respondent, which is impugned one. Under such circumstances, this petition has been brought forth seeking for the relief of declaration as one asked for in the writ petition.

6. Advancing his arguments on behalf of the petitioner, the learned senior counsel in short would submit that when the petitioner approached the Project Officer, the second respondent, it was a matter of policy and therefore he could not take a decision was the reply and then the petitioner approached the first respondent, General Manager, who assured him that if there was a decision to be taken for second weigh bridge, it would be only by way of a public auction and that he believed the same. But contrarily, now a lease agreement has been given in favour of the third respondent, not by way of a public auction though it was a commercial category activity. Therefore, the lease agreement which was carried out strangely and against the development policy, has got to be declared as one illegal. So long as such kind of lease to be made to different persons, who have got right to ask for bid and take it in

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auction, is done by not following the method followed by the SIPCOT, the rights would be defeated and it would be in violation of their own policy. The learned counsel also relied on a letter addressed by the SIPCOT to M/s Shruthi Enterprises, where it has been clearly stated that SIPCOT complexes have to be leased out only in public auction for commercial activities. Which such a communication was addressed and when an assurance was given by the first respondent to the petitioner, such a course was not followed. But the lease agreement has been entered into without following the known proceedings of law and due procedure and it has been given in favour of the third respondent. Under such circumstances, it has to be declared as one against the public policy and apart from that, a direction has got to be given to the second respondent to lease out the same land by way of public auction. Hence the order has to be set aside.

7. Countering to the above, the learned counsel for respondents 1 and 2 would submit that in the instant case the petitioner never approached the officials of the SIPCOT nor made an application and it was not made by way of a public auction, but the procedure usually adopted before making the lease was followed; that in such cases, the applications are called for, actually they are verified and they called for an interview and this allotment was given only to the persons who are eligible and who satisfies the conditions as one found in the terms and in the instant case, the same parameters were followed and there is nothing to be claimed clandestinely. In this case, applications were called for, third respondent filed an application along with others, called for interview and allotments were made after being satisfied. Further, there was no auction. This petitioner states that when he approached respondents 1 and 2, there was an assurance that it would be given by way of public auction. These are all nothing but a concocted story for the purpose of writ petition. There was no violation of public policy and what has been the procedure followed in the past has been followed strictly and there was no violation at all and it was made purely on merits following the policy of allotment. The third respondent who was the original applicant was given the lease. Hence, the writ petition has got to be dismissed.

8. The learned senior counsel appearing for the third respondent would submit that this petition has been brought forth due to vindictiveness. The object of the petitioner, therefore, is not to give allotment to 3rd respondent but to give lease in his favour, and only to defeat the lease already been granted in favour of the third respondent herein. The third respondent was one of the applicants and he was called for personal interview by the department and inspection was also carried out and following the same, on selection he has paid a sum of Rs.18 lakhs towards the plot deposit to the development charges and thus, it was given in his favour and thus, there was no violation of any procedural formality. Apart from that, the letter referred upon by the petitioner cited above was actually one from SIPCOT to one M/s Shruthi Enterprises and what was asked for was that M/s Shruthi Enterprises made an application for installation of the Petrol Bunk, Restaurant and also Water service station and not one for a weigh bridge as one asked for in the instant case. Apart form this, while referring to the same, they were all shown as commercial activities and that must be only by way of public auction and this production of the letter which was actually given to M/s

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Shuthi Enterprises by the petitioner himself would clearly reveal the bonafide of the petitioner, who has brought forth a writ petition before this Court. Added further, even M/s Shruthi Enterprises had also got the allotment of land for the purpose of having a weigh bridge, where there was no public auction, but the same procedure was followed. Under such circumstances, the application is lack of bona fide and hence it has got to be dismissed.

9. The Court has paid its anxious consideration on the submissions made.

10. The Court is of the considered opinion that this petition deserves an order of dismissal for more reasons than one.

11. The only grievance ventilated by the petitioner is that he approached the department for allotment of a piece of land from SIPCOT for having his weigh bridge, but it was not given to him. According to him he approached the second respondent. Thereafter he approached the first respondent and he has given an assurance that if any allotment was to be made for a weigh bridge in Perundurai, it would be only by way of a public auction. Nowhere in the entire affidavit it is pleaded that he made any application at any point of time or any representation made or rejection of the same was made and thus it would be quite clear that except the averments made in the affidavit, no materials are placed to answer before this Court to accept the said contention. Therefore, the petitioner cannot be said to be an aggrieved person due to any rejection of his application. A person who has not even made an application before the authorities seeking for any allotment has brought forth this writ petition before this Court and thus it is highly doubtful whether the petitioner has got any locus standi to question such an agreement in question.

12. Secondly, in the instant case, the only contention raised by the petitioner's counsel is that auction has been done clandestinely and not by way of a public auction and thus it is against the public policy. This contention cannot be accepted for the reason that in the instant case the procedure that are being followed by the SIPCOT in the case of allotment for the weigh bridge was not the one by way of public auction and the procedure that has been followed by the SIPCOT in the past has been followed. From the counter affidavits filed by the lessor and third respondent lessee, it would be quite clear that there was an application made by the third respondent; that he was called for an interview and in the interview held, the officials were satisfied that the terms and conditions could be fulfilled by the third respondent and only on inspection, the agreement has been entered into. It is true that there was no public auction. Merely because there was no public auction conducted, the Court is of the considered opinion that the lease entered into between the lessor and lessee namely the SIPCOT and the third respondent cannot be rejected on that ground so long as no procedural formalities are violated.

13. Nextly, the letter that has been produced by the petitioner side, is actually one written by SIPCOT to M/s Shruthi Enterprises. A reading of which would clearly reveal that an application was made by M/s Shruthi Enterprises for carrying out the commercial activities namely for having

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restaurant, water service station and petrol bunk. In the reply given by the SIPCOT, it is mentioned that they are commercial activities and for that purpose it would be done only in public auction and no where it is found in the letter that it was for the purpose of weigh bridge and now it is quite clear that letter is of no avail to the petitioner. So long as no irregularity or illegality is noticed in the lease granted in favour of the third respondent, the petitioner's contention that it has got to be struck down as it is violative of public policy cannot be accepted. Added further, the Court is able to notice that in the absence of any material to indicate that the petitioner ever applied for such allotment, now the petition has been directly brought forth invoking writ jurisdiction, which was nothing but in the opinion of the Court vexatious and hence it has got to be dismissed and accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. State Industries Promotion Corporation
   of Tamil Nadu Limited,
   19-A, Rukmani Lakshmipathy Road,
   Post Box No.7223, Egmore, Chennai 600 008.

2. The Project Officer,
   SIPCOT Complex,
   Perundurai,
   Erode District.

1 cc To M/s.Silambanan, Advocate, SR.58806
1 cc To Mr.Devaraj, Advocate, SR.58689.
1 cc To Mr.S.D.SPhilip, Advocate, SR.58667.

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